

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

CHESTNUT RIDGE TRANSPORTATION INC.¹

Employer

and

Case No. 2-RC-22750

UNITED TRANSPORTION UNION

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Audrey Eveillard, a Hearing Officer of the National Labor Relations Board, herein called the Board. At the hearing, the parties differed on the scope of the appropriate unit. The Petitioner sought a unit of bus drivers at the Employer's facility located at 230 Red School House Road, Chestnut Ridge, New York, while the Employer contended that it had two other facilities that should be included in the unit. The Employer also contended, contrary to the Petitioner, that the unit should also include bus monitors and shop maintenance employees.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

¹ The name of the Employer was set forth by Employer's counsel at the hearing and appears as corrected.

² Briefs filed by counsel to Petitioner and the Employer have been received and considered.

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Chestnut Ridge Transportation Inc., the Employer, a New York corporation with its principal place of business located at 56 West Church Street, Spring Valley, New York, is engaged in the business of providing local bus transportation services and derives its income from contracts with local school boards for the transportation of school children. Annually, in the course and conduct of its business operations, the Employer derives gross annual revenues in excess of \$250,000, and purchases and receives goods and supplies valued in excess of \$50,000 at its New York facilities directly from suppliers located outside the State of New York.

Based on the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that United Transportation Union is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The Employer operates school bus services for school districts and private schools in Rockland County utilizing approximately 400 buses, vans and wheelchair vans. Each bus carries the name "Chestnut Ridge Transportation" regardless of which bus yard they are assigned to. In addition to transporting

children to and from school each day, the Employer provides transportation for school trips as well as for sports teams from the various schools. Additionally, pursuant to a contract with Rockland County Mental Health Department, the Employer also provides transportation services for preschool handicapped children. The Union seeks to represent bus drivers at one of the Employer's three facilities in Rockland County. There are approximately 121 employees in the Union's proposed unit. The Employer, contrary to Petitioner, asserts that the only appropriate unit would include drivers at all three of its Rockland County facilities, as well as monitors and shop employees who do maintenance work on the vehicles. The Employer's unit is compressed of approximately 459 employees.

In addition to its bus yard located at Red Schoolhouse Road in Chestnut Ridge, New York, herein called the Chestnut facility, out of which the drivers sought by this petition are dispatched, the Employer operates bus yards located in Hillburn and Spring Valley in Rockland County. The Chestnut Ridge facility, which has approximately 100 school buses and 12 vans, is about 5 miles away from the Spring Valley yard and about 10-12 miles away from the Hillburn yard. The Employer, which was started by John Corr's father almost 30 years ago, is currently owned by Mr. Corr and his family. Mr. Corr and his family also own Trans Group LLC, the company that manages the bus yards. In addition to providing management services to the Employer, Trans Group negotiates the contracts with the various school districts on behalf of all three of the Employer's Rockland County facilities. The Employer also provides school bus services on

Long Island and in Sullivan County. In 1997, the Employer acquired the Hillburn bus yard and assumed the prior owner's contracts with various school districts, through Chestnut Ridge Transit, Inc., which is also owned by the Corr family. The Employer conceded at the hearing that Chestnut Ridge Transit, Inc. had no separate identity or function and is operated as part of Chestnut Transportation, the Employer herein.

Management

At each of its Rockland County facilities, the Employer employs bus drivers, van drivers, safety employees and shop employees who do all mechanical repairs. While the record is unclear as to the number of monitors employed by the Employer, it appears that monitors are employed at each facility. There is an operations manager at each facility that reports to Helen Schwabacher, the County operations manager. Patricia Riviello, Trans Group's Vice President for Human Resources, is responsible for performing all payroll and personnel services for the Rockland County facilities. She handles all matters relating to benefits, life insurance, disability insurance, workers compensation and hiring. George Michelle serves as the Employer's safety director and provides managerial control over the Employer's safety teams that are working at each facility. There is also a shop supervisor at each facility to oversee the work of the mechanics employed in the shop area, which is in a separate and distinct area at the Employer's facilities.

The dispatchers³ at each facility ensure that each route is covered and they are in communication with each school bus via the radio. They receive maintenance reports from drivers reporting mechanical problems they have experienced with the bus they are assigned to drive.

Drivers

All drivers are hired through the Vice President of Human Resources' office. Bus drivers are paid \$12 to 13 per hour depending upon their level of experience at the time of hire. Van drivers are paid \$10.50 per hour. Drivers receive many of the same health benefits and insurance as the monitors and shop employees. While the Employer pays 100% of the health insurance premiums for its shop employees, drivers receive only a portion of their health insurance premiums from the Employer⁴. Drivers also do not receive paid vacation time, while shop employees do. All employees, including the drivers, are subject to the Employer's handbook provisions.

Drivers report each morning to their assigned bus yard, sign the attendance sheet, pick up the keys to the bus from the dispatcher and make the morning run which lasts from about 6:30am to 9:30am. Upon their return to the yard, they return the bus and leave the yard. Some drivers do a midday run, which requires that they drive from 10:30am to 12:30am. The driver returns for the afternoon run at 1:30pm and the process is repeated. The afternoon run ends approximately at 4:30pm.

³ Neither party appears to be seeking to include dispatchers.

⁴ As a driver earns greater seniority, the percentage of the premium paid by the Employer increases.

Assignments are made for the drivers at the outset of the school year and will generally remain unchanged for the duration of the school year. The Employer uses deck drivers or temporary replacement drivers that it has at each facility to fill in for permanent drivers who are absent due to sickness or vacation. If no deck driver is available to do the run and the yard will be short, the Employer, through its Regional manager, assigns a driver from another facility to do the run. When a driver out of one yard is needed to cover a run for another yard, the driver is still paid through his or her own yard. This occurs fairly regularly. Patricia Riviello, the Vice President for Human Resources, estimated that 5 to 20 times each day a driver from yard will cover at one of the other two facilities. It further appears from the record that this decision as to who will cover a given run is made at the Regional level.

Each individual who drives a school bus must obtain and maintain a Class B commercial drivers license. A van driver who must have a class C license may not drive the school bus unless he or she obtains the proper class B commercial license. It does appear that some of the mechanics have a class B commercial drivers license and have on occasion in prior years driven a bus when needed.⁵

The Employer has given gifts of shirts, hats and jackets containing the Employer's logo to its drivers. However, drivers are not required to wear uniforms or any identifying insignia.

Drivers receive both classroom and over the road training from the Employer. Some training is state-mandated and takes place prior to the school year and again in December or January. Monitors attend training with drivers.

⁵ The record establishes that no mechanics have driven this school year.

Most employees for jobs with the Employer apply through the Chestnut Ridge facility, which is the most visible and accessible facility operated by the Employer. However, all hiring decisions are made by the Employer at the Regional level, although local the local manager may make a recommendation as to potential hires. Also any decision to discharge an employee is made by Helen Schwabacher, the Regional manager, after consultation with the local manager at the yard. The Employer also handles disciplinary matters at the regional office, although the local management does have the authority to send an employee home if that employee is unwell.

Monitors

School districts with whom the Employer has contracts or the County assigns monitors. The County contract deals with children each of whom has an individualized education plan (IEP). The child's IEP notes whether the child requires a monitor because of some physical or emotional disability. At times, a monitor is placed on the bus in order to maintain discipline and order on the vehicle for the entire route. At other times, a monitor is assigned to a particular child. Some vehicles have two monitors, one for a particular child and the other for the bus. The monitor is responsible for dealing with any problem among the students and they will deal directly with the student. At times, the monitor will ask the driver to pull over so the driver can go back and help separate some students. A monitor is normally assigned to work a specific run and thus will be teamed with the same driver.

The monitor position starts at \$8.00 per hour. There are 8 monitors employed in Chestnut Ridge and 112 employed at all three Rockland facilities.

Mechanics

Mechanics are 40-hour per week employees who work in the garage or shop area of each facility. There is a maintenance shop supervisor who oversees the employees in this department. The maintenance department in each facility has a time clock for the exclusive use of the shop employees. It also has its own rest room and water fountain for shop employees. Mechanics also wear a gray uniform that is adorned with the company logo. Maintenance employees also have their own employee manual.

The only location at which the shop department is somewhat different is at Spring Valley, where there is a spray roof, which is used for painting the vehicles. Some of the maintenance shop employees are also licensed to drive school buses, although no mechanic has driven a bus this school year. Mechanics normally receive their work orders from the dispatchers after the driver has left a work sheet noting the mechanical issue that has been noticed by the driver. Additionally, from time to time drivers will bring the bus back to the maintenance area and they will report the mechanical problem directly to the shop employees.

Mechanics as full-time employees are paid a base salary, which is adjusted based upon years of experience. Mechanics accrue vacation and sick leave and receive a 100% of the insurance premium paid by the Employer for their own insurance. The hiring process is also modified for mechanics as they are interviewed by the shop supervisor who is familiar with the technical nature of

their job duties. There are 9 mechanics at the Chestnut Ridge facility and 23 mechanics altogether at all three facilities.

Discussion

UNIT SCOPE

The Applicable Legal Standards

Section 9(b) of the Act states that the “Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof.”

The Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit or the most appropriate unit. Rather the Act requires only that the unit be appropriate. The Board has held that in determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042 (1994).

Here, the Petitioner has requested a unit composed only of drivers who are employed and dispatched out of the Chestnut Ridge facility. The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood*, 323 NLRB 665,666 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). The presumption in favor of a single location unit can only be overcome “by a showing of functional integration so substantial as to negate the separate identity of a single-facility unit.” *Id.*

The factors that the Board examines in making this determination include: past bargaining history; geographical location of the facilities in relation to each other; extent of interchange of employees; work contacts existing among the several groups of employees; extent of functional integration of operations; degree of centralized versus local control over daily operations and labor relations; and the differences, if any, in the skills and functions of employees. *Id.* at 42, citing *Sol's*, 272 NLRB 621 (1984). These factors must be weighed in resolving the unit contentions of the parties. The burden is on the party opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, above at 429; *Red Lobster*, 300 NLRB 908, 910-911 (1990).

The Employer, who in addition to Rockland County also operates in Sullivan County and Long Island, urges a finding that the unit of drivers at its Chestnut Ridge facility sought by the Petitioner cannot stand as an appropriate unit. Rather, the Employer argues that the unit must include all three of its Rockland County locations, as well as the additional classifications of monitors and the shop department employees.

The factors to be considered in reaching a unit determination here include past bargaining history; the extent of contact and interchange among employees; the extent of functional integration of operations; the differences, if any, in the equipment or in the skills or types of work required; the centralization or lack thereof of management and supervision, particularly in regard to labor relations; and the physical and geographical location in relation to other facilities. *Waste*

Management of Washington, Inc., 331 NLRB 309 (2000); *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Novato Disposal Services*, 328 NLRB 820 (1999); *Courier Dispatch Group, Inc.*, 311 NLRB 728 (1993); *Esco Corp.*, 298 NLRB 837 (1990); *Dayton Transport Corp.*, 270 NLRB 1114 (1984).

In applying the applicable legal principles to this case, I find that the Employer has rebutted the presumption of a single location unit of drivers at Chestnut Ridge is an appropriate unit. The Employer operates its business activity in several areas around the New York City area, including in Rockland County. The distance between the three Rockland County facilities is no more than 12 miles and all locations may be reached by automobile within a short period of time. However, most importantly, the Employer's operation is highly integrated. Equipment and personnel are used extensively within the three Rockland County facilities. On a daily basis up to 20 drivers are moved from one bus yard to another to cover a run⁶. Decisions regarding moving personnel to another facility to cover a run are made by the Regional manager. In this regard, the Employer operates within a centralized management structure. As such all contracts, regardless of which bus yard will service the contract, are negotiated by Timothy Flood, Executive Vice President, of Trans Group, the managing agent of the Employer. While each of the three Rockland County facilities has a manager on premises, the record establishes that all hiring decisions are made at the regional level with only minimal involvement by the local manager. Further, all personnel and labor policies for the employees at the three Rockland County

⁶ Drivers spend little time at the yard as their job duties require them to be on the road transporting school children to and from school. Thus there is little time for drivers to interact with other employees, including drivers dispatched from the same yard.

facilities are set by the vice president for human relations, including wage rates to be paid and benefits to be offered to employees. All personnel and accounting functions are handled at the regional office as well. When discipline is to be imposed, local managers make recommendations, but the decision is made at the regional level.

The operation of this school bus company is strikingly similar to that in *Dattco, Inc.*, 338 NLRB No. 7 (2002). As in *Dattco*, the Employer's operation is so centrally controlled and the operation of the three facilities are so interrelated that a unit limited to Chestnut Ridge is not appropriate. Thus, I agree with the Employer that the single location unit sought by Petitioner is not appropriate.

Other Classifications

The Petitioner seeks to represent a unit solely of drivers. The Employer asserts that the monitors and mechanics employed in its shop department must also be included in any unit found appropriate⁷. Based upon the entire record, it appears that the drivers have a separate and distinct community of interest from these other classifications and a unit of drivers is an appropriate unit for collective bargaining.

As the Board noted in *Home Depot USA*, 331 NLRB 1289, 1291 (2000), in certain situations drivers may have overlapping functions with other classifications of employees and in other situations a unit of drivers may constitute a separate appropriate unit. The factors here establish that a separate

⁷ The Employer has not explained why it is not seeking to include dispatchers.

unit of drivers as sought by Petitioner is appropriate. All the drivers require a class B commercial drivers license in order to be employed by the Employer. They transport school aged children to and from school, as well as drive students to class trips and after school sporting events. As drivers, they spend almost all of their working time on the road driving buses or vans. Except for those relatively rare instances in which a monitor is required, drivers have almost no contact with other employees, including other drivers. While drivers are assigned to routes by the Employer, monitors are assigned to a bus by virtue of the terms of the agreement between the school district or Rockland County and the Employer. The function of monitors is very different from that of the driver. The monitor works with a specific child whose IEP indicates the need for assistance while on the bus due to the student's emotional or physical disability or the comportment of students on the bus requires a monitor to maintain order. The driver will only intervene in the situation with the students on the bus where the monitor is unable to maintain order and requests assistance from the driver. Drivers and monitors may attend training sessions together to discuss the loading and unloading of the bus. Moreover, monitors are paid significantly less than the drivers are paid. In *Home Depot*, supra, the Board relied upon the licensing of the drivers as well as the lack of time in which the driver worked side-by-side with the other employees in finding that a separate unit of drivers was appropriate. Likewise here, I find that the drivers perform completely different functions from those performed by monitors, they are paid significantly more than

monitors, they are assigned to routes in a different manner than the monitors and it is not clear if they have significant interchange with monitors.

Similarly, the shop employees who maintain the buses and vans in good working order perform work functions that are very different from that of the drivers. While some mechanics also possess a class B commercial drivers license and have driven school bus routes in past years, the maintenance employees have a very separate and distinct community of interest. They are hired in a manner that is different than other employees. In hiring, the shop supervisor does the interviewing because of the technical nature of this work. Unlike all other employees employed by the Employer, the shop employees are full-time 40-hour per week workers. They receive a salary, punch a time clock, have separate supervision, work in a designated area that has its own restroom facility and water cooler. They have different cost programs for their insurance as well. Thus, I find based upon this record that a separate unit of drivers is an appropriate unit.

UNIT⁸

Included: All full-time and regular part-time drivers employed by the Employer at its Chestnut Ridge, Spring Valley and Hillburn facilities in Rockland County, New York.

Excluded: All other employees, monitors, shop employees and all guards, professional employees and supervisors within the meaning of the Act.

⁸ The Union indicated that it would proceed to an election in any unit found appropriate. Thus, they shall be given a reasonable period of time to submit any additional showing of interest.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time⁹ and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and regulations.¹⁰ Eligible to vote are those in the unit who were employed for an average of four hours per week during the calendar quarter immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military service of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated eligibility period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not

⁹ Pursuant to Section 101.21 of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this Decision.

¹⁰ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(1) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules. requires that the Employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.¹¹ Those eligible shall vote on whether or not they desire to be represented for collective bargaining purposes by United Transportation Unit.¹²

Dated at New York, New York
October 17, 2003

(s) Celeste J. Mattina
Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

Code: 420-4025
440-3300
440-1760-6200

¹¹ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **October 24, 2003**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. In the event the Petitioner notifies me that it does not wish to proceed to an election in the unit found appropriate, the election eligibility list will not be provided to Petitioner.

¹² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **October 31, 2003**.